

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

MARK E. GESSNER,

Plaintiff,

-v-

JOHN S. HOWARD, et al.,

Defendants.

Case No. C-3:11-cv-286

Judge Thomas M. Rose

Chief Magistrate Judge Sharon L. Ovington

ENTRY AND ORDER OVERRULING GESSNER'S OBJECTIONS (Doc. #73) TO THE CHIEF MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS; ADOPTING THE CHIEF MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (Doc. #72) IN ITS ENTIRETY; DENYING GESSNER'S MOTION FOR PAUPERIS STATUS AND CERTIFYING THAT GESSNER'S APPEAL IS NOT TAKEN IN GOOD FAITH

Pro Se Plaintiff Mark E. Gessner ("Gessner") seeks to appeal this Court's Entry and Order dismissing this case. Gessner's case was dismissed on July 18, 2013. (Doc. #68.)

Trial of this case was set to begin on May 20, 2013. On or around the date of the Final Pretrial Conference, Gessner made last-minute requests for an extension of the trial date and for appointment of counsel. On May 21, 2013, this Court granted him an extension of the trial date, declined to appoint counsel to represent him and provided him with approximately one month to acquire counsel. This Court also informed Gessner about the Dayton Volunteer Lawyers Project and provided him with contact information.

The deadline for Gessner to obtain counsel came and went without any word from either him or any retained counsel or the Volunteer Lawyers Project. This Court then directed Gessner to show cause why the case should not be dismissed due to his failure to prosecute, and set July

10, 2013 as the show-cause deadline. This deadline passed and nothing was heard from Gessner. Therefore, this Court dismissed Gessner's case. (Doc. #68.)

Gessner then filed a Notice of Appeal (doc. #70) and a Motion for Leave To Appeal *In Forma Pauperis* (doc. #69). On August 23, 2013, Chief Magistrate Judge Sharon L. Ovington filed a Report and Recommendations recommending that Gessner's Motion for Leave To Appeal *In Forma Pauperis* be denied and that this Court certify that Gessner's appeal is not taken in good faith. Gessner objected (doc. #73) and the Defendants responded to Gessner's Objections (doc. #74). This matter is, therefore, ripe for decision.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that Gessner's Objections to the Chief Magistrate Judge's Report and Recommendations are not well-taken, and they are hereby OVERRULED. The Chief Magistrate Judge's Report and Recommendations is adopted in its entirety.

Gessner's Motion for Leave To Appeal *In Forma Pauperis* and the accompanying affidavit indicate that Gessner lacks the financial wherewithal to pay the required appellate filing fee and otherwise proceed on appeal. However, Gessner's appeal is not taken in good faith given all of the chances he was provided to proceed to trial. Therefore, Gessner's Motion for Leave To Appeal *In Forma Pauperis* is denied, and Gessner's appeal is not taken in good faith.

DONE and **ORDERED** in Dayton, Ohio, this Seventeenth Day of September, 2013.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

Mark E. Gessner at his last address of record